

---

**FIRST SUPERVISORY NOTICE**

---

To: **Straumur-Burdaras Investment Bank hf.**

Of: **Berkeley Square House  
3<sup>rd</sup> Floor, Berkeley Square  
London  
W1J 6BU**

Date: **9 March 2009**

**TAKE NOTICE: The Financial Services Authority (“FSA”) of 25 The North Colonnade, Canary Wharf, London E14 5HS has taken the following action:**

**1. ACTION**

1.1 For the reasons set out below and pursuant to sections 194, 196, 197 and 199 of the Financial Services and Markets Act (“the Act”), the FSA has decided to impose the following requirement on you, Straumur-Burdaras Investment Bank hf. (“the Firm”).

1.2 The Firm must not take any action which has, or may have, the effect of:

- (a) transferring, by dividend, loan, transfer of collateral or otherwise, any assets located in the United Kingdom on or from the date this requirement takes effect (“UK assets”) from;
- (b) creating any security interest over any UK assets; or
- (c) incurring, or increasing, the contractual or other liabilities (including, without limitation, any liability under a guarantee or indemnity) in the United Kingdom of,

the Firm to, in favour of, or for the benefit of any person unless the Firm has given the FSA at least 3 days' written notice of its proposed action and the FSA has confirmed, in writing, that it has no objection to the proposal.

- 1.3 For the purposes of section 48 and 201 of the Act, the requirement referred to in paragraph 1.2 is a requirement of the kind mentioned in section 48(3(a) of the Act.
- 1.4 The Firm must cease carrying out any regulated or unregulated activities through its branch in the United Kingdom unless the Firm has given the FSA at least 3 days' written notice of its proposed activity and the FSA has confirmed, in writing, that it has no objection to the activity. This requirement does not prevent the Firm from continuing to perform advisory functions as an AIM registered nominated adviser in relation to client relationships that were in existence on 9 March 2009.
- 1.5 These requirements take effect immediately from the date of this Supervisory Notice (the "Notice").

## **2. REASONS FOR THE ACTION**

### **Summary**

- 2.1 The FSA has concluded, on the basis of the facts and matters described below, that in respect of the Firm's UK branch:
  - (a) the Firm has contravened the requirement to maintain adequate overall financial resources in GENPRU 1.2.26R imposed on the Firm under the Act; and
  - (b) it is desirable to exercise its power of intervention under sections 194, 196 and 199 of the Act in order to protect the interests of actual or potential consumers.
- 2.2 The FSA has decided to exercise its power of intervention as a matter of urgency in order to protect the interests of consumers. Pursuant to article 33 of the Directive of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (2006/48/EC) (the "BCD") and section 199 of the Act, the FSA will inform the home state regulator and the European Commission of its decision at the earliest possible opportunity.

### **Relevant statutory provisions**

- 2.3 The FSA's statutory objectives are established at section 2(2) of the Act. One of the FSA's statutory objectives is the protection of consumers.
- 2.4 The statutory and regulatory provisions set out below are consistent with, and give effect to the BCD.
- 2.5 Article 30 of the BCD provides that:

“(1) Where the competent authorities of a host Member State ascertain that a credit institution having a branch or providing services within its territory is

not complying with the legal provisions adopted in that State pursuant to the provisions of this Directive involving powers of the host Member State's competent authorities, those authorities shall require the credit institution concerned to put an end to that irregular situation.

(2) If the credit institution concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly.

The competent authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the credit institution concerned puts an end to that irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State”.

2.6 Article 33 of the BCD provides that:

“Before following the procedure provided for in Article 30 the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interest of depositors, investors and others to whom services are provided. The Commission and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity”.

2.7 Article 41 of the BCD provides that:

“Host Member States shall, pending further coordination, retain responsibility in cooperation with the competent authorities of the home Member State for the supervision of the liquidity of the branches of credit institutions.”

2.8 Section 194 of the Act permits the FSA to exercise its power of intervention against an incoming EEA firm in circumstances where it appears to it that (among other things):

- (i) the firm has contravened, or is likely to contravene, a requirement which is imposed on it by or under this Act (in a case where the FSA is responsible for enforcing compliance in the UK); or
- (ii) it is desirable to exercise the power in order to protect the interests of actual or potential consumers.

2.9 Section 196 of the Act permits the FSA to impose any requirement in relation to a firm which it would be able to impose if the firm's permission to carry on regulated activities was a Part IV permission under the Act and the FSA was entitled to exercise its power to vary that permission.

2.10 Sections 45(4) and 43 of the Act provide the FSA with the power to vary a Part IV permission by imposing requirements upon regulated and authorised persons as it considers appropriate.

- 2.11 Section 197(2) of the Act provides that a requirement imposed by the FSA may take effect immediately or on a specified date, only if the FSA, having regard to the ground on which it is exercising its power of intervention, considers that it is necessary for the variation to take effect immediately, or on a specified date.
- 2.12 Section 199 of the Act gives effect to the requirements of articles 30 and 33 of the BCD. Section 199(6) of the Act permits the FSA as host State regulator to exercise its power of intervention as a matter of urgency in order to protect the interests of consumers. If the FSA exercises this power it must inform the firm's home State regulator and the Commission at the earliest opportunity.

### **Regulatory provisions**

#### Rules

- 2.13 GENPRU 1.2.26R states that a firm must at all times maintain overall financial resources, including capital resources and liquidity resources, which are adequate, both as to amount and quality, to ensure that there is no significant risk that its liabilities cannot be met as they fall due.
- 2.14 GENPRU 1.2.3R states that an incoming EEA firm which is a full BCD credit institution and has a branch in the UK, is subject to the provisions of GENPRU 1.2 in relation to liquidity risk of the branch. Consequently, the systems, processes and resources required by GENPRU 1.2 extend only to the EEA credit institution's UK branch.

#### Guidance

- 2.15 The FSA must have regard to the guidance published in the Enforcement Guide ("EG") in deciding to take the action as outlined above. In particular, EG 8.1 to 8.12 (inclusive) and EG 8.26 are relevant.
- 2.16 EG 8.1 states that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it when it considers how it should deal with a concern about a firm. It will also have regard to:
- (a) the responsibilities of a firm's management to deal with concerns regarding the firm or regarding the way in which its business is, or has been, run; and
  - (b) the principle that a restriction imposed on a firm should be proportionate to the objectives that the FSA is seeking to achieve.
- 2.17 EG 8.2 states that the FSA will take formal action against a business if that business is being conducted in such a way that the FSA judges it necessary to act in order to address the consequences of non-compliance with the Act, the Principles, and other relevant rules.

- 2.18 EG 8.4 states that where the FSA cannot rely on a firm taking remedial action or the firm fails to comply with the FSA's reasonable request to take remedial action, the FSA will consider exercising its formal powers to vary a firm's permission. This includes instances where the FSA is concerned that the consequences of a firm not taking the desired steps may be serious and:
- (a) the firm appears unwilling or unable to take adequate and untimely steps to address the FSA's concerns; or
  - (b) the imposition of a formal statutory requirement may assist the firm to take steps which otherwise would be difficult because of legal obligations owed to other parties.
- 2.19 EG 8.5 states that the circumstances in which the FSA will consider exercising its power include where there are serious concerns regarding a firm or the way in which its business is being conducted.
- 2.20 EG 8.7 states that the FSA will consider exercising its own initiative power as a matter of urgency where the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately, and the circumstances indicate that it is appropriate to use statutory powers immediately to ensure the firm addresses these concerns.
- 2.21 EG 8.9 includes amongst other factors in determining the appropriateness of the FSA's exercise of its powers, the extent of any loss or risk of loss or other adverse effect on consumers and the extent to which customer assets appear to be at risk.
- 2.22 EG 8.26 states that when the FSA exercises its power of intervention it adopts a similar approach to that which it takes regarding its own initiative powers to vary regulated firms' Part IV permission, modified to take account of the difference in the statutory grounds used for exercising the powers.

#### **Facts and matters relied upon**

- 2.23 The Firm is a company incorporated in Iceland and is authorised by the Icelandic Financial Supervisory Authority (the "FME") to carry on, amongst other things, a deposit-taking business. As such, the Firm is a credit institution for the purposes of the BCD and has exercised its passport rights as an incoming firm to operate a branch in the UK. However, the passport rights which have been exercised by the Firm do not extend to deposit-taking activities and the Firm, therefore, does not accept any deposits through its branch in the UK.
- 2.24 For the purposes of the BCD, the FME is the home state regulator of the Firm and the FSA is the host state regulator in relation to the branch operating in the UK.

- 2.25 The UK branch of the Firm commenced operations in 2007. The branch has assets of approximately €200mn which consist mainly of securities funded by its head office in Iceland and under a prime brokerage facility from [redacted].
- 2.26 The branch also carries out corporate finance activities since the Firm took on some of the staff, clients and the trading name of Teathers following the failure of Landsbanki Securities.
- 2.27 On 9 March 2009, the Icelandic Financial Supervisory Authority (“FME”) announced (“Announcement”) that on 8 March, the Firm stated to the FME that it had to meet EUR 33 million of obligations on 9 March but only had EUR 15.3 million of disposable funds and that it was the Firm’s assessment that it was not a viable option to come up with the necessary funds to continue operating and that therefore it had decided to request a moratorium on 9 March.
- 2.28 The Announcement also states that the FME has used its powers under Icelandic law to assume the powers of a meeting of shareholders of Straumur and has decided to immediately suspend the entire board of Straumur and to appoint a resolution committee to take over the powers of the Board.

### **Conclusions**

- 2.29 The facts and matters described above lead the FSA, having regard to its statutory regulatory objectives, to the following conclusions:
- (a) the Firm ran out of liquidity on 9 March 2009; and
  - (b) the Firm has provided the FSA with no credible business or funding plan as to its future operations on an ongoing basis.
- 2.30 It therefore appears to the FSA that the Firm has contravened GENPRU 1.2.26R.
- 2.31 The requirement in paragraph 1.2 of this Notice is intended to support the steps taken by the FME to preserve the position of the Firm and to prevent the inappropriate dissipation of the Firm’s assets pending an orderly resolution of the Firm’s affairs by the Icelandic authorities.
- 2.32 The requirement in paragraph 1.4 of this notice is designed to prevent new consumers being inappropriately brought into a relationship (and the extension of existing relationships) with the Firm in the light of the fact that has stated that it is unable to meet its obligations as they fall due. However, it is appropriate to allow the Firm to continue its advisory activities with existing clients as a registered AIM nominated advisor so that those clients receive continuity of advice.

### **3. REASONS FOR MAKING THE REQUIREMENTS EFFECTIVE IMMEDIATELY**

- 3.1 The Announcement makes it clear that the firm is effectively insolvent
- 3.2 It is therefore appropriate to impose the requirements in this notice with immediate effect to protect the interests of actual and potential consumers.

#### **4. DECISION MAKER**

This decision was taken by the Chairman of the Regulatory Decisions Committee.

#### **5. PUBLICATION AND CONFIDENTIALITY**

- 5.1 The FSA is required by section 391(5) of the Act to publish such information about the matter to which this Notice relates as it considers appropriate in the circumstances, unless under section 391(6) such publication would in its opinion be unfair to the firm to which the requirement applies or prejudicial to the interests of consumers.
- 5.2 In the FSA's opinion, publication of such information would not be prejudicial to the interests of consumers as the Announcement has been published by the FME. Therefore, the FSA has decided to publish this Notice.
- 5.3 The FSA will inform the Firm's home state regulator and the European Commission of the requirements imposed under this notice pursuant to our obligations under article 33 of the BCD and section 199(7) of the Act.

#### **6. IMPORTANT**

- 6.1 This Supervisory Notice is given to you, the Firm in accordance with section 197(3) of the Act. The following statutory rights are important.

##### **The Tribunal**

- 6.2 The Firm may refer this matter to the Financial Services and Markets Tribunal ("the Tribunal"). Under section 133 of the Act, you have 28 days from the date this Supervisory Notice was given to refer the matter to the Tribunal or such other period as specified in the Tribunal Rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you, the Firm and filed with a copy of this Notice. The Tribunal's address is: 15-19 Bedford Avenue, London WC1B 3AS (telephone 020 7612 9700). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and in the Tribunal Rules.
- 6.3 The Firm should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, a copy of the notice must also be sent to the FSA. Any copy notice should be sent to [REDACTED] at the FSA, 25 The North Colonnade, Canary Wharf, London, E14 5HS.

##### **Representations**

- 6.4 The Firm has the right to make written and oral representations to the FSA (whether or not this matter is referred to the Tribunal). If the Firm wishes to make written representations, it must do so by 12 3 April 2009 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Lynn Cheesman, Regulatory Decisions Committee Professional Support Services, at the above address for the FSA. If the Firm wishes to make oral representations, it should inform Lynn Cheesman by 20 April 2009.

**FSA contacts**

- 6.5 If you, the Firm has any questions regarding the procedures of the Regulatory Decisions Committee, you should contact either Lynn Cheesman (tel: 020 7066 3192 / fax: 020 7066 3193) or Jackie Noonan, Team Leader of RDC Professional Support Services (tel: 020 7066 3074 / 020 7066 1015).
- 6.6 For more information concerning this matter generally, you should contact [REDACTED] on [REDACTED] or [REDACTED] on [REDACTED].

**Tim Herrington**  
**Chairman, Regulatory Decisions Committee**